



December 18, 2019

VIA EMAIL

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, DC 20522-0208
FOIArequest@state.gov

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

Reporting has indicated that President Trump's personal lawyer, Rudolph Giuliani, aided by the president's former personal attorneys Victoria Toensing and Joseph E. diGenova, and others, took significant efforts to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.¹ In addition to Giuliani's efforts, President Trump himself has sought information on political rivals from other foreign leaders. For instance, President Trump took a July 25, 2019 call with Ukraine's president, in which President Trump reportedly asked Ukraine's government to open investigations into his potential presidential campaign opponent, Joe Biden.² Reports now indicate that the Trump administration acted to withhold vital aid to Ukraine days before President Trump's July phone call with Ukraine's President Zelensky.³

¹ Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

² Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep't of State, Sept. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>; Devan Cole, *Trump Says He Discussed Biden with Ukrainian President and Democrats Threaten 'New Stage of Investigation'*, CNN (Sept. 22, 2019, 6:41 PM), <https://www.cnn.com/2019/09/22/politics/adam-schiff-donald-trump-ukraine-whistleblower-investigation-impeachment/index.html>.

³ Karoun Demirjian et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukraine President*, WASH. POST (Sept. 23, 2019, 10:40 PM),



On September 24, 2019, Speaker of the House Nancy Pelosi announced an impeachment inquiry of President Trump in light of allegations that Trump pressured Ukraine to investigate former Vice President Biden.⁴ The inquiry has resulted in a series of high-profile hearings held by the House Permanent Select Committee on Intelligence and the House Judiciary Committee, as well as a formal impeachment report detailing the evidence of President Trump's efforts—spearheaded by Mr. Giuliani—to condition official government acts, including hundreds of millions of dollars of aid and a White House meeting, on an agreement by Ukrainian leadership to announce an investigation into the Bidens.

Reports now indicate that Mr. Giuliani is actively continuing his efforts to engage with foreign officials regarding a potential investigation related to the son of former Vice President Biden. As recently as this month, Mr. Giuliani traveled to Kiev and Budapest as part of these efforts.⁵

American Oversight seeks records to shed light on whether and to what extent U.S. government officials are aware of, or are aiding, Mr. Giuliani's latest efforts in Ukraine and Hungary related to encouraging foreign investigations of a political opponent of the president.

Requested Records

American Oversight requests that your agency produce the following records within twenty business days:

- 1) All records reflecting communications (including emails, email attachments, cables, memos to file, text messages, messages on messaging platforms⁶ (such

https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html.

⁴ Nicholas Fandos, *Nancy Pelosi Announces Formal Impeachment Inquiry of Trump*, N.Y. TIMES, Sept. 24, 2019, <https://www.nytimes.com/2019/09/24/us/politics/democrats-impeachment-trump.html>.

⁵ Kenneth Vogel & Benjamin Novak, *Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians*, N.Y. TIMES, Dec. 4, 2019, <https://www.nytimes.com/2019/12/04/us/politics/giuliani-europe-impeachment.html>.

⁶ Records recently released as part of the impeachment inquiry announced by Speaker Nancy Pelosi on September 24, 2019, show that State Department officials corresponded via text message on the WhatsApp messaging platform regarding official State business with Rudolph Giuliani, including through apparent personal electronic devices. Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, Oct. 3, 2019, <https://foreignaffairs.house.gov/cache/files/5/0/50759349-fe81-4444-a990->

as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any of the agency officials specified below, regarding Rudy Giuliani's travel to Ukraine and Hungary (including any other stops on the itinerary) in December 2019.⁷

- 2) All records reflecting communications (including emails, email attachments, cables, memos to file, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (i) Rudy Giuliani, Victoria Toensing, Joseph DiGenova, or Mr. Giuliani's personal assistants or others communicating on his behalf, including Jo Ann Zafonte, Christianne Allen, or Beau Wagner, and (ii) any of the agency officials specified below.

Specified State Officials:

Office of the Secretary, Executive Secretary, Counselor, and Under Secretary for Political Affairs:

- i. Secretary of State Mike Pompeo
- ii. Executive Assistant Richard Buangan
- iii. Executive Secretary Lisa Kenna
- iv. Counselor to the Secretary T. Ulrich Brechbuhl
- v. Under Secretary for Political Affairs David Hale

[65c92528de82/50EE8A2F1CFC493A98876200762152FC.chairmen-letter-on-state-department-texts-10-03-19.pdf](https://www.nytimes.com/2019/10/16/us/politics/gordon-sondland-intelligence-risk.html); Nicholas Fandos & Adam Goldman, *Ex-Aide Saw Gordon Sondland as a Potential National Security Risk*, N.Y. TIMES (Oct. 16, 2019, 12:54 PM), <https://www.nytimes.com/2019/10/16/us/politics/gordon-sondland-intelligence-risk.html> (citing testimony that Ambassador "Sondland extensively used a personal cellphone for official diplomatic business"). Consequently, a reasonable search likely necessitates a search of non-official electronic messaging systems.

⁷ Communications about Mr. Giuliani's travel include but are not limited to his plans to meet with foreign government officials including former Ukrainian Prosecutor General Yuriy Lutsenko, former Ukrainian diplomat Andriy Telizhenko, Ukrainian parliamentarian Andriy Derkach, or any other foreign government officials; or to Giuliani's work with Chanel Rion of One America News Network on a documentary about issues related to Ukraine and investigations.

Bureau of European and Eurasian Affairs

- vi. Acting Assistant Secretary Philip Reeker
- vii. Deputy Assistant Secretary George Kent

U.S. Embassy in Ukraine:

- viii. Charge d’Affaires, a.i., of the U.S. Embassy in Kiev, William Taylor
- ix. Deputy Chief of Mission of the U.S. Embassy in Kiev, Kristina Kvien
- x. Consul General of the U.S. Embassy in Kiev, John Ballard
- xi. Counselor for Political Affairs of the U.S. Embassy in Kiev, David Holmes

U.S. Embassy in Hungary:

- xii. U.S. Ambassador to Hungary, David Cornstein
- xiii. Deputy Chief of Mission of the U.S. Embassy in Budapest, Marc Dillard
- xiv. Counsel of the U.S. Embassy in Budapest, Christopher Vogt
- xv. Anyone serving in the capacity of Counselor for Political Affairs of the U.S. Embassy in Budapest

U.S. Mission to the European Union:

- xvi. U.S. Ambassador to the E.U., Gordon Sondland
- xvii. Deputy Chief of Mission of the U.S. Mission to the E.U., Mark Libby
- xviii. Anyone serving in the capacity of Counselor for Political Affairs of the U.S. Mission to the E.U.

Please provide all responsive records from October 1, 2019, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency’s regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.”⁸ The subject matter of

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

the requested records specifically relates to the operations or activities of the government, including communications surrounding efforts by the personal attorney to the president to advance his and the president's personal interests, and actions reportedly taken by the U.S. Government to aid those efforts—these matters are now the subject of the U.S. House of Representatives' impeachment inquiry. There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether former administration officials were involved in an effort to use the president's private attorney to lobby Ukrainian officials. This request seeks to shed light on how senior agency officials are handling responses to and coordination regarding the ongoing impeachment inquiry. The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁹ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.¹⁰

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.¹¹ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹² posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed

⁹ See 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁰ American Oversight currently has approximately 14,730 page likes on Facebook and 86,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Dec. 5, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Dec. 5, 2019).

¹¹ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹² *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹³ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁴ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁵ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹⁶

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as

¹³ See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁴ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹⁵ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹⁶ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹⁷ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁸
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁹ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

¹⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

¹⁸ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Melanie Sloan
Senior Advisor
American Oversight